

No 2/8/2011-CL.V  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> floor, 'A' Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Road, New Delhi  
Dated: 13.07.2011

All the Regional Directors,  
All the Registrar of Companies  
All stakeholders

**Subject :** Draft Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 2011

Sir,

The Ministry of Corporate Affairs is considering to revise the Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 1977 to sort out the difficulties being faced by the lenders while converting debentures or loans to companies in to shares as per existing rule.

You are requested to examine the draft rule and furnish your comments / recommendations to the Ministry latest by 29<sup>th</sup> July, 2011 by e-mail on the following e-mail addresses.

monika.gupta@mca.gov.in

kamna.sharma@mca.gov.in

Yours faithfully,

(Monika Gupta)  
Assistant Director

## **DRAFT NOTIFICATION**

[TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II, SECTION 3,  
SUB SECTION (i), EXTRAORDINARY]

GOVERNMENT OF INDIA  
**Ministry of Corporate Affairs**

### **Notification**

New Delhi the \_\_\_\_\_ 2011

G.S.R. .... (E). – In exercise of the powers conferred by section 642 read with clause (a) of the proviso to sub-section (3) of section 81 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, in supercession of companies Public Companies (Terms of Issue of Debentures and Raising of Loans with Option to Convert such Debentures or Loans into Shares) Rules, 1977 namely:-

#### **1. Short Title and Commencement:**

- (1) These rules may be called the Public Companies (Terms of Issue of debenture and of raising of loans with option to convert such debentures or loans in to shares) Rules, 2011.
- (2) They shall come in to force on the date of their publication in the Official Gazette.

#### **2. Definitions:**

In these rules, unless the context otherwise requires;-

- (a) “Act” means the Companies Act,1956 (1 of 1956);
- (b) “Public financial institution “ means-
  - (i) any of the financial institution specified in sub- section (1) of Section 4 A of the Act

- (ii) any of the other institutions specified by the Central Government to be public financial institutions under sub-section (2) of the said section 4A.
- (c) “Bank” means a bank approved by the Reserve Bank of India and includes foreign banks approved by the regulator of that country.

**3. Particulars regarding the terms of issue of debentures or the terms of raising of loans by a public company:**

The terms of issue of debentures or the terms of raising of loans by a public company which include a term providing for an option to convert such debentures or loans or any part thereof into shares in the company or to subscribe for shares in the company shall not require the approval of the Central Government under clause (a) of the proviso to sub-section (3) of section 81 of the Act, if such terms confirm to the following requirements, namely:-

- (a) the debentures or loans may be issued or raised either through private subscription or through the issue of a prospectus to the public ;
- (b) a public financial institution either underwrites or subscribes to or sanctions the whole or part of the issue of debentures or the raising of loans, as the case may be ;
- (c) when and where necessary, the consent of the Securities and Exchange Board of India (SEBI) constituted under the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), is obtained for the issue of shares consequent upon the conversion of debentures of loans into equity capital ;
- (d) having regard to the financial position of the company the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or loans, the capital of the company, its loans, liabilities, its reserves, its profits during the immediately preceding five years and the current market price of the shares of the company, as may be applicable, the financial institutions provide for the terms including the term providing for an option to convert such debentures or loans or any part thereof, into shares in the company or to subscribe shares for therein,:-

- (i) in case of listed companies, at a price as per SEBI norms or with the prior approval of SEBI, as the case may be;
- (ii) in case of un-listed company, having loan from or having debentures issued to a PFI or Bank, as per mutual agreement between the company and PFI or Bank;
- (iii) in any other case, at par or at a premium not exceeding twenty-five per cent of the face value of the shares.

Provided that a public financial institution or a bank shall not convert all or any part of such debentures or loans unless:-

- (a) the company has issued the debentures or raised the loan has defaulted in the repayment/redemption of, or payment of interest on, such loans or debentures; and
- (b) such bank or public financial institution has given the company notice of its intention to convert such loans or debentures at least 30 days prior to the intended date of conversion.”

[F No 2/8/2011-CL.V]

J.N. Tikku,  
Joint Director

\*\*\*\*\*